

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD L. RIDER and U.S. POSTAL SERVICE,
POST OFFICE, Louisville, Ky.

*Docket No. 97-984; Submitted on the Record;
Issued December 4, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to justify the termination of appellant's compensation benefits.

On February 9, 1995 appellant, a city letter carrier, filed a claim asserting that he developed stress, depression and anxiety while in the performance of his duties. The Office accepted his claim for the conditions of panic disorder with agoraphobia¹ and major depressive episode with psychotic features. Appellant received compensation on the periodic rolls.

The Office referred appellant, together with a statement of accepted facts and copies of medical records, to Dr. Terry Peacher, a psychiatrist, for a second opinion. In a report dated May 14, 1996, Dr. Peacher related appellant's history of illness and findings on mental status examination. He diagnosed major depression, recurrent, improved and panic disorder with agoraphobia, improved. Dr. Peacher concluded as follows:

"It is this examiner's opinion that [appellant's] major depression and panic disorder with agoraphobia is no longer aggravated by his work environment and most of his recollections about the work environment are more pleasant than unpleasant. His self-esteem was connected with being a productive worker and since he is no longer productive, his self-esteem is compromised. When working, he was given a couple of warnings due to allowing his vehicle to get out of control and also for urinating in a yard on one occasion when he could no longer control his bladder due to his prostate problem. I do not elicit any symptoms suggestive of a post-traumatic stress disorder connected with his work with the [employing establishment]. The current major stress for the patient is his urinary incontinence, his need to wear diapers. In fact, he feels that if that problem could

¹ It appears from the Office's nonfatal summary form that this accepted condition was later changed to aggravation of panic disorder with agoraphobia.

be overcome then he would feel prepared for employment. Under the current circumstances, especially with the patient's urologic difficulty, [he] is probably unfit for gainful employment."

Form reports dated October 17 and November 9, 1995, Dr. Christopher Reyburn, appellant's attending psychiatrist, diagnosed panic disorder with agoraphobia. He indicated with an affirmative mark that the condition found was caused or aggravated by employment for the following reason: "Overall anxiety and depression related to job stresses."

On September 30, 1996 the Office issued a notice of proposed termination, advising that the weight of the medical evidence rested with Dr. Peacher. In a decision dated November 19, 1996, the Office terminated appellant's compensation benefits effective that date.

On December 2, 1996 appellant requested reconsideration and advised that additional medical evidence would be forthcoming.

In a decision dated January 2, 1997, the Office denied appellant's request.

The Board finds that the weight of the medical evidence of record justified the Office's termination of compensation benefits.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³ The Office's procedure manual provides that, having accepted a claim and initiated payments, the Office may not terminate compensation without a positive demonstration, by the weight of evidence, that entitlement to benefits has ceased.⁴ The inadequacy or absence of a report in support of continuing benefits is not sufficient to support termination, and benefits should not be suspended for that reason.⁵

The Office based its termination of benefits on the May 14, 1996 report of Dr. Peacher, the second opinion psychiatrist. He was provided a statement of accepted facts and copies of appellant's medical records. Dr. Peacher explained that appellant's accepted conditions were no longer aggravated by his work environment, with most of his recollections thereof being more pleasant than not. Dr. Peacher noted that appellant's self-esteem was compromised because he was no longer a productive worker, but that his current major stress related to a prostate problem, such that appellant felt he would be prepared for employment if that problem could be overcome.

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Cases*, Chapter 2.812.3 (July 1993).

⁵ *Id.*, Chapter 2.812.7(c)(1).

The Board finds that his opinion is based on a complete and accurate factual and medical background and is sufficiently well rationalized to constitute the weight of the medical evidence. The form reports from Dr. Reyburn, appellant's attending psychiatrist, lack the reasoned discussion provided by Dr. Peachner and are insufficient to create a conflict in medical opinion necessitating referral to an impartial medical specialist under 5 U.S.C. § 8123(a).

The November 19, 1996 decision of the Office of Workers' Compensation Programs is affirmed.⁶

Dated, Washington, D.C.
December 4, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁶ Because the Board has reviewed the merits of appellant's claim, the Office's January 2, 1997 decision denying a merit review is moot. As appellant filed his appeal with the Board on January 11, 1997, the Office's February 18, 1997 decision denying modification of its prior decision must be considered null and void. *Douglas E. Billings*, 41 ECAB 880 (1990).